Datuk May Phng @ Cho Mai Sum (suing as chairman, committee member and representative of Persatuan Penganut Buddha Rumah Kechara Malaysia ('Kechara House'), an association registered under the Societies Act 1966 and in the capacity of representative of Kechara House and/or all Kechara House's members) & Ors v Tan Pei Pei

HIGH COURT (KUALA LUMPUR) — SUIT NO 23NCVC-76–10 OF 2015
KAMALUDIN MD SAID J
24 MAY 2018

Tort — Damages — Defamation — Claim for general damages — Whether plaintiff entitled to general damages — Quantum of damages

The present case was about the assessment of general damages arising from a defamation suit brought by the plaintiffs against the defendant. The plaintiff had filed a defamation suit against the defendant based on an email ('the said email') which was sent by the defendant on 17 May 2014. The defendant admitted and conceded her liability in respect of the plaintiff's claim for defamation. The quantum of general damages was not agreed by the parties and the defendant had also denied her liability to pay for any aggravated and exemplary damages claimed by the plaintiffs. There was nothing stated in the judgment that aggravated and exemplary damages as claimed by the plaintiffs in the trial court. Therefore, the only subject matter was confined to solely on the quantum of damages to be assessed and awarded to the plaintiffs.

Held:

(1) It was trite law that a libel was actionable per se. Therefore, the damages caused to the plaintiff was presumed in law and the plaintiff did not have to show any proof that the said email had caused any damage to the plaintiff in order to claim for any damages from the defendant. Thus, the plaintiffs must be compensated (see paras 24–25).

(2) In assessing the quantum of damages, it was trite law that the court took into account many factors such as the position of the plaintiff, the gravity and seriousness of the libel, the mode and extent of publication, the humiliation and embarrassment to the plaintiff, the conduct of the defendant from the time of publication of the libel and absence of correction, retraction or apology. In the present case, the court found that: (a) the evidence showed that the plaintiffs were well-known, had a good reputation and high standing in the society; (b) the gravity of the

words used in the email was highly damaging, scandalous and vicious; (c) the said email had been widely circulated and/or presumed to be so; (d) the said email had caused humiliation and embarrassment to the plaintiffs; and (e) there was apology from the defendant which the court could consider before awarding damages to the plaintiffs (see paras 28, 35, 38, 44 & 51).

(3) Based on the authorities cited, the court allowed the general damages for the global sum of RM80,000 to the plaintiffs and interest of 5% from 17 May 2014 until full payment thereof. The court held that the amount awarded was fair and reasonable. The court further awarded costs of RM10,000 to the plaintiffs (see paras 58–59).

[Bahasa Malaysia summary

Kes semasa adalah berkenaan penilaian ganti rugi am yang timbul daripada satu saman fitnah yang dibawa plaintif-plaintif terhadap defendan. Plaintif telah memfailkan satu saman fitnah terhadap defendan berdasarkan satu emel ('emel tersebut') yang dihantar oleh defendan pada 17 Mei 2014. Defendan telah mengakui liabiliti defendan berkenaan fitnah yang dibuat kepada plaintif. Nilai ganti rugi am tidak dipersetujui oleh pihak-pihak dan defendan juga menafikan liabiliti untuk membayar ganti rugi teruk dan ganti rugi teladan yang dituntut plaintif. Tiada dalam mana-mana penghakiman yang mengatakan tentang ganti rugi teruk dan ganti rugi teladan seperti mana yang telah dituntut plaintif semasa di mahkamah bicara. Oleh itu, perkara utama adalah berkenaan dengan nilai ganti rugi yang perlu ditentukan dan diberikan kepada plaintif-plaintif.

Diputuskan:

(1) Adalah menjadi undang-undang yang mapan bahawa fitnah yang dibuat secara bertulis (libel) adalah tindakan yang boleh diambil. Oleh itu, kerugian dianggap di dalam undang-undang telah dialami plaintif dan plaintif tidak perlu menunjukkan sebarang bukti bahawa emel tersebut telah mendatangkan kesan dan kerugian kepada plaintif bagi membolehkan plaintif menuntut ganti rugi. Oleh itu, plaintif mestilah dibayar ganti rugi (lihat perenggan 24–25).

(2) Dalam menentukan nilai ganti rugi am, adalah menjadi undang-undang tetap bahawa mahkamah mengambil kira faktor-faktor seperti kedudukan plaintif, graviti dan keseriusan fitnah yang dibuat, cara penyebaran fitnah dibuat, kesan dan perasaan malu yang dialami plaintif, perlakuan defendan dari hari penyebaran fitnah dibuat dan tiadanya permohonan maaf daripada defendan. Dalam kes semasa, mahkamah mendapati bahawa: (a) bukti menunjukkan bahawa plaintif adalah seorang yang dikenali ramai dan mempunyai reputasi dan standard yang tinggi dalam kalangan masyarakat; (b) graviti perkataan yang digunakan

dalam emel tersebut adalah melampau, berbentuk skandal dan merosakkan; (c) emel tersebut telah disebarkan kepada orang ramai dan dianggap telah tersebar; (d) emel tersebut telah menyebabkan plaintif berasa malu dan hina dan (e) terdapat permohonan maaf daripada defendan di mana mahkamah boleh pertimbangkan sebelum memberikan ganti rugi kepada plaintif-plaintif (lihat perenggan 28, 35, 44 & 51).

(3) Berdasarkan autoriti yang telah dijelaskan, mahkamah membenarkan ganti rugi am untuk jumlah keseluruhan sebanyak RM80,000 kepada plaintif dan faedah sebanyak 5% dari 17 Mei 2014 sehingga tarikh penyelesaian. Mahkamah juga memutuskan bahawa jumlah yang diberikan adalah adil dan munasabah. Mahkamah juga memberikan kos sebanyak RM10,000 kepada plaintif (lihat perenggan 58–59).]

Notes

For cases on defamation, see 12(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 248–276.

Cases referred to

Abdul Rahman Talib v Seenivasagam & Anor [1965] 1 MLJ 142b (refd)
Abu Hassan bin Hasbullah v Zukeri bin Ibrahim [2017] MLJU 1676; [2017] 1 LNS 1754, CA (refd)
Binaan Sentosa Sdn Bhd v Ng In Kun & Anor [2011] MLJU 897; [2012] 2 CLJ 232, HC (refd)
Cheong Chark v Gammon (Malaya) Ltd [1939] 1 MLJ 65 (refd)
Dato' Dr Tan Chee Khuan v Chin Choong Seng @ Victor Chin [2011] 8 MLJ 608, HC (refd)
Dato' Mohamad Salim Fateh bin Fateh Din v Nadeswaran a/l Rajah (No 1) [2012] 10 MLJ 203, HC (refd)
Dato' Seri Anwar bin Ibrahim v New Straits Times Press (M) Sdn Bhd & Anor [2010] 2 MLJ 492, HC (folld)
Datuk Harris Mohd Salleh v Datuk Mohd Shafie Hj Apdal & Ors [2009] 7 MLJ 371; [2009] 2 CLJ 682, HC (folld)
Datuk Seri Anwar bin Ibrahim v Wan Muhammad Azri bin Wan Deris [2014] 9 MLJ 605, HC (refd)
Datuk Seri Utama Dr Rais bin Yatim v Amizudin bin Ahmat [2012] 2 MLJ 807, HC (refd)
Huth v Huth [1915] 3 KB 32, CA (refd)
Keith Richard Judd v Suppayah a/l Krishnan [2016] 9 MLJ 380; [2015] 1 LNS 856, HC (refd)
Kesatuan Kebangsaan Pekerja-Pekerja Bank & Ors v The New Straits Times Press (M) Bhd & Ors and another suit [2013] 8 MLJ 199, HC (refd)
Kok Yu Po v Wong Kui Man [2015] MLJU 851, HC (refd)
Lim Guan Eng v New Strait Times Press (M) Bhd [2017] 9 MLJ 622, HC (refd)

Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato' Vincent Tan Chee Yioun [2000] 4 MLJ 77, FC (refd)
MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & Other Appeals [1995] 2 MLJ 493, CA (refd)
Mox-Linde Gases Sdn Bhd (formerly know as MOX Gases Sdn Bhd and prior to that as MOX Gases Bhd) v Wong Siew Yap [2015] 10 MLJ 413, HC (refd)
PP v Mohamad bin Sabu [2017] 10 MLJ 273, HC (refd)
Raub Australian Gold Mining Sdn Bhd v Mkini Dotcom Sdn Bhd & Ors [2018] 4 MLJ 209, CA (refd)
Tan Ah Hong v CTOS Data System Sdn Bhd [2016] MLJU 504; [2016] 3 AMR 457, CA (refd)
YB Hj Khalid bin Abdul Samad v Datuk Aziz bin Isham & Anor [2012] 7 MLJ 301; [2011] 1 LNS 1161, HC (folld)
Yeo Ing King v Melawangi Sdn Bhd [2016] 5 MLJ 631, CA (refd)

Justin Voon (Lee Chooi Peng and Chiam Sia Yann with him) (Justin Voon Chooi & Wing) for the plaintiffs.
Sreether Sundram (Murali B Pillai and Assoc) for the defendant.

Kamaludin Md Said J:

INTRODUCTION

[1] When I was assigned to continue this part heard case of YA Datuk Norbee bt Arifin, it was at the stage of hearing for assessment of general damages arising from a defamation suit brought by the plaintiffs against the defendant. The record shows that during the first day of the trial on 6 April 2017 before the learned judge, the defendant had admitted and conceded to her liability in respect of the plaintiffs' claim for defamation. Judgment was obtained against the defendant in respect of the plaintiffs' claim (see: the judgment dated 6 April 2017 at encl 76).

[2] At the outset, the court was informed that quantum of general damages was not agreed by the parties and the defendant had also denied her liability to pay for any aggravated and/or exemplary damages claimed by the plaintiffs.

[3] The plaintiffs contended that the subject matter of the trial herein is confined to the *quantum of general damages* to be awarded to the plaintiffs (as recorded in para 3 of the judgment dated 6 April 2017) and the defendant's *liability to pay for aggravated and exemplary damages to the plaintiffs and its quantum*.

[4] However, perusal of the said judgment at encl 76, there are only four orders made in the judgment as follows:

A ... ON THE DEFENDANT'S ADMISSION, IT IS HEREBY ADJUDGED THAT —

(1) an injunction to prohibit the defendant from making any defamatory remarks and/or communicating to any party about the contents of e-mail dated 17.5.2014 written by the defendant in any manner;

B

(2) the defendant to disclose number of persons and their identification or any other party that she had communicated or copied the e-mail dated 17.5.2014 to other than the names she had forwarded to the Plaintiffs by way of Affidavit within 8 days from the date of the judgment;

C

(3) General damages for defamation to be assessed and paid by the defendant to the Plaintiffs respectively; and

(4) Defendant to pay the amount of general damages at the interest of 5% per annum from 17.5.2014 until date of full payment.

D

[5] There was nothing stated in the judgment that aggravated and exemplary damages as claimed by the plaintiffs under prayers 25(v) and (vi) of the statement of claim as part of the judgment.

E

[6] Therefore, *liability to pay for aggravated and exemplary damages* to the plaintiff and its quantum at the interest of 5%pa until date of full payment does not arise.

F

[7] The court was also informed that the defendant's counterclaim was struck out on 18 March 2016.

[8] Therefore, the subject matter of the trial herein is confined to solely on the *quantum of general damages* to be assessed and awarded to the plaintiff (as recorded in para 3 of the judgment dated 6 April 2017).

G

THE TRIAL

[9] The documents before this court for purposes of reference are as follows:

H

(i)	Ikatan pliding terpinda	—	A;
(ii)	Isu-lsu untuk dibicarakan	—	B;
(iii)	Fakta-fakta yang dipersetujui	—	C;
(iv)	Ikatan dokumen bersama (Part B — Jld 1)	—	D;
(v)	Ikatan dokumen bersama (Part B — Jld 2)	—	D1;
(vi)	Ikatan dokumen bersama (Part C)	—	D2;
(vii)	Ikatan dokumen tambahan plaintif	—	D3;
(viii)	Ikatan dokumen tambahan (2) plaintif	—	D4;
(ix)	Ikatan dokumen defendan	—	D5;

I

(x) Ikatan dokumen tambahan (3) plaintif — D6;
(xi) Ringkasan kes plaintif — E; and
(xii) Ringkasan kes defendan — F.

[10] The witnesses who gave evidence during the trial and their respective witness statements are marked as follows:

(a) the plaintiff's witnesses:

(i) PW1: Datuk May Phng @ Cho Mai Sum
The plaintiff's witness statement: WSPW1
The plaintiff's additional witness statement: WSPW1(A)
The plaintiff's additional witness statement (2): WSPW1(B)

(ii) PW2: Kok Yek Yee
The plaintiff's witness statement: WSPW2

(iii) PW3: Ooi Seong Huat (Henry)
The plaintiff's witness statement: WSPW3

(iv) PW4: Thong Jiunn Perng
The plaintiff's witness statement: WSPW4

(v) PW5: Koo Carmen
The plaintiff's witness statement: WSPW5

(vi) PW6: Phng Li Kim
The plaintiff's witness statement: WSPW6
The plaintiff's additional witness statement: WSPW6(1)
The plaintiff's additional witness statement (2): WSPW6(2)

(b) the defendant's witness:

(i) DW1: Tan Pei Pei
The defendant's witness statement: WSDW1

[11] The trial completed on 25 January 2018 and parties have filed in their written submissions.

SALIENT BACKGROUND FACTS

[12] The plaintiff filed a defamation suit against the defendant based on an email dated 17 May 2014 at D1/730 ('the said email'), which was sent by the defendant to at least four recipients as displayed in the said email, ie 'Dar Cell Kwok', 'Audrey Tan', 'Cheph Chaang' and 'HP Loke'.

[13] The said email dated 17 May 2014 written by the defendant is as

follows:

> It is about the Kechara House — the monster master, Burcha/Tsim Tulku, the unbeatable con-man in town.
>
> I am going to be in the High Court Stand from 21st to 23rd May at Malaysia High Court, waiting to hear how bullshitting & liars this case is going to be. Basically it's about 3 phases of documentary shooting job that this Monster Master had assigned Catwalk Productions and AP Films to produce — 9 years ago and the had cancelled it! Unbelievable ...
>
> PHANG LI KIM, Kechara House's new CEO has filed the case till High Court Malaysia, but then now asking us for mediation — twice! Nevertheless, twice also had turned down by me even I am only 2ND DEFENDANT. I told them let's meet in court because I want JUSTICE. This is really not about me and my case but it is about many-many-many ex members that I have met and seen, how torture and suffer they are during they were in the organization until they left — still — they got threaten by the Monster Master! A few of them had even reached the stage of 'mentally unstable' ...
>
> The fact that they had cancelled the job 2 days before the actual shooting, because the monster master failed to show up at the shooting location. With black and white contract all parties had signed, cancelation within 7 days — no refund because we have whole production crew and expensive equipment to pay. Well, the new CEO, Phang Li Khim who doesn't know head and tale is now trying to sue us to get back the money, because one day the monster master threw the dices on the floor then telling her to bring up the case to sue us and he guaranteed them that they could win, and money would give to her to host her new season of Panorama Zone!
>
> How ridiculous ...
>
> *ALL VICTIMS* wish to share their truth, bitter experiences all their youth, wealth, hard earn-savings that they had lost to the Kechara Organization during the years being students to this Monster Master, Tsim Tulku. Thank God I have never become his student although many times he had tried to convince me to be one.
>
> All of us need public to know and hear *THE TRUTH.*
>
> *MOST IMPORTANTLY WE NEED TO ALERT THE PUBLIC SO THAT NO NEWER VICTINS FALLS INTO THE CULT.*
>
> Please join is to listen to the trial if you can spare sometime - 10 am onward, please support.
>
> Thank you. Humbly
>
> AP Tan

[14] The said email is defamatory to the plaintiffs because it has been admitted by the defendant and adjudicated upon in the judgment dated 6 April 2017. Despite the admission and in the submission, attempt was made by the defendant to contend that the main thrust of this email is aimed at Burcha/Tsim Tulku, who is not a plaintiff in this suit. In my view the issue

raised is misconceived and it is too late at this stage for the defendant to argue that the email is aim at Burcha/Tsim Tulku. The said email referred to a blog titled 'http:insidethecompany.wordpress.com' and the defendant started the said email by stating that 'It is about Kechara House — the monster master, Burcha/Tsim Tulku, the unbeatable con-man in town'. 'Burcha/Tsim Tulku' ie HE Tsem Tulku Rinpoche is the founder and spiritual advisor of Kechara House. It is known to the public and members of Buddhist practitioners that any reference to HE Tsem Tulku Rinpoche is also reference to Kechara House.

[15] The said email was sent by the defendant a few days before the trial of another civil suit, ie Kuala Lumpur Civil Suit No 22NCVC-1511–12 of 2012 ('the said 1511 Suit') filed by the second plaintiff against Chan Lai Ming and AP Films (the defendant here is the sole proprietor of AP Films) for return of money held on trust.

[16] It is trite that the email must be read in its whole context. It is an established principle of law that the publication must be examined as a whole and the context in which the words are used, the nature of the publication and the emphasis placed on any particular words must be examined in assessing whether the said email is defamatory.

[17] In *Public Prosecutor v Mohamad bin Sabu* [2017] 10 MLJ 273 at pp 303–304 it was held that:

> [33] It is my view that generally in an action for defamation; be it civil or criminal, the publication must be examined as a whole.

[18] In *Keith R Evans The Law of Defamation in Malaysia & Singapore* (2nd Ed) it is provided as follows:

> In considering whether such ordinary inferences arise from the words, the whole publication must be examined, including among other things, the context in which the words are used, the nature of the publication and the emphasis placed on any particular words.

[19] Thus in *Binaan Sentosa Sdn Bhd v Ng In Kun & Anor* [2011] MLJU 897; [2012] 2 CLJ 232, See Mee Chun JC (now J) held as follows:

> [11] *I am mindful too that in determining whether the words complained of are defamatory one must take into account not only the actual words but the context in which they were used*. This is because there may be other words which take away the sting. Refer to *Soh Chun Seng v CTOS-EMR Sdn Bhd* [2003] 4 MLJ 180; [2004] 5 CLJ 46 ... (Emphasis added.)

[20] Be that as it may in the present case, the defendant had admitted liability that the said email is defamatory of the plaintiffs. By such admission of

liability means the said email is defamatory of the plaintiffs and it follows that the email had tarnished the reputation of the first plaintiff and the founder of the first plaintiff, ie HE Tsem Tulku Rinpoche thus, the said email also made defamatory statements against the second and third plaintiffs, where clear reference was made to the said 1511 Suit filed by the second plaintiff and the third plaintiff was also named in the said email.

[21] At paras 9–11 of the plaintiffs' statement of claim, the plaintiffs pleaded that the contents of the email written by the defendant are defamatory to the plaintiffs which had tarnished the image and reputation of the plaintiffs and lowered the plaintiffs in the estimation of the right thinking members of society that the plaintiffs, inter alia:

° led by a 'monster master' ie a 'monster' and or 'an aggressive person';

° led by 'unbeatable conman' a person who is an expert in cheating people;

° is a 'cult' ie an organisation with extreme or dangerous religious beliefs;

° 'bullshitting and liars in Suit 1511;

° had caused 'torture', 'suffering', 'threaten' until members ran away;

° members become 'mentally unstable';

° members become 'victim' where their 'youth', 'wealth', 'savings' will 'disappear' to the plaintiffs or 'Kechara Organisation' when they become students of Tsem Tulku;

° 'ridiculous' ie being the very unreasonable man and acted without cause; and

° involved in 'cult' activities that 'members of the public' must be informed of the dangerous activities.

[22] The defendant further encouraged the recipients of the said email to attend court during the trial of the said 1511 Suit and also to further disseminate the said email to other members of the public.

[23] Therefore, it is beyond doubt that the defendant's admission to the plaintiffs' pleaded case, the defendant must be held accountable to the reliefs claim by the plaintiffs in the statement of claim. The defendant's defamatory email had seriously damaged the reputation of the plaintiffs and the goodwill of the first and second plaintiffs.

THE LAW ON DAMAGES FOR DEFAMATION

[24] It is trite law that a *libel is actionable per se*. Therefore, the *damages* caused to the plaintiffs is *presumed in law* and the plaintiffs do not have to show any proof that the said email has caused any damages to the plaintiffs in order to claim for any damages from the defendant. See *Yeo Ing King v Melawangi Sdn Bhd* [2016] 5 MLJ 631 at p 661 where it was held that:

> [78] Libel is actionable per se, that is to say, *there is no need to prove actual damage for 'the law presumes that some damage will flow in the ordinary course of things from the mere invasion of his absolute right to reputation'*: *Gatley on Libel and Slander* (10th Ed) at p 983. (Emphasis added.)

[25] The plaintiffs must be compensated and the next question is how much would be the quantum of damages for the loss of reputation. In *Datuk Seri Utama Dr Rais bin Yatim v Amizudin bin Ahmat* [2012] 2 MLJ 807, it was held that a particular libel case cannot be equated with other libel cases. Each libel case is unique and has its own particular and peculiar facts.

[26] In *Kesatuan Kebangsaan Pekerja-Pekerja Bank & Ors v The New Straits Times Press (M) Bhd & Ors and another suit* [2013] 8 MLJ 199, it was held that the tort of libel has been recognised as actionable per se. Thus where a personal plaintiff proves publication of a false statement damaging to his reputation without lawful justification, he need not plead or prove special damage in order to succeed (see also *Cheong Chark v Gammon (Malaya) Ltd* [1939] 1 MLJ 65).

GENERAL DAMAGES

[27] In assessing the quantum of damages, it is trite law that the court takes into account, inter alia, the following factors:

(a) the position and standing of the plaintiff;

(b) the gravity and seriousness of the libel;

(c) the mode and extent of publication;

(d) humiliation and embarrassment caused to the plaintiff;

(e) the conduct of the defendant from the time of the publication of the libel; and

(f) absence of correction, retraction or apology.

See: *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & Other Appeals* [1995] 2 MLJ 493 at p 524; *Dato' Mohamad Salim Fateh bin Fateh Din v Nadeswaran a/l Rajah (No 1)* [2012] 10 MLJ 203; *Dato' Dr Tan Chee Khuan v Chin Choong Seng @ Victor Chin* [2011] 8 MLJ 608; *Datuk Seri Utama Dr Rais*

bin Yatim v Amizudin bin Ahmat [2012] 2 MLJ 807.

[28] The evidence shows that the plaintiffs are well-known, have a good reputation and high standing in the society. The first plaintiff (Kechara House) is a Buddhist organisation founded in year 2000. At the date of the said email, the first plaintiff had been in establishment for about 14 years with an excellent track record of religious and charitable work and had attained good reputation. It is an established organisation and active in producing news articles on the charity work done by the first plaintiff (see — D/11–18 and the first plaintiff's magazines which were published by the second plaintiff and at D/19–162, D/163–294 and D/295–370).

[29] The evidence also shows that the second plaintiff is the publishing arm of the Kechara Organisation established in year 2001. At the time when the said email was published, the second plaintiff had been in establishment for about 13 years and had edited and/or published extensive articles, books, magazines and publications as seen in D1/397–729 and D2/816–835. The second plaintiff had also published DVDs and CD as seen in D3/14–17 and also the co-producer to the series 'The Paranormal Zone', wherein a DVD of Season 1 and 2 of the same can be found at D/391–396. The second plaintiff is the 'voice' of the first plaintiff and both are entities under the Kechara Organisation.

[30] The third plaintiff is a graduate and a celebrity host for the popular TV series called 'The Paranormal Zone' which has completed its fourth season. The third plaintiff has received wide coverage on the media as seen at D/384–390 and the 'Paranormal Zone' is a popular TV series with high viewer's ratings and aired across South East Asia regions including Malaysia, Singapore, Hong Kong, Taiwan, Philippines, Thailand and Indonesia. The audience profile and the graphs showing the number of viewers of 'The Paranormal Zone' can be found at D2/861–862, D2/863–869, D2/870–871.

[31] In defamation cases, the pertinent point is always that whether the impugned remarks or words complained of in their natural and ordinary meaning and/or by way of inference were defamatory of the plaintiffs. The test whether the words complained of in the article were capable of being, and were in fact, defamatory of the plaintiff was whether such words were calculated to expose him to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower him in the estimation of right thinking members of society generally (see *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142b).

[32] From a reading of the said email, I found the contents of it are highly libelous and the gravity and seriousness of the words used are, amongst others,

the worst words that can possibly be used against the first plaintiffs, in particular, which is a charitable and religious organisations that depended on sponsor to operate.

[33] The defendant submitted that the evidence failed to established that there was drop in the number of members following the email or sponsorship was adversely affected following the email or that Kechara house suffered a depreciation in the numbers of members or became less popular or suffered any loss of revenue or support whether financial or otherwise as a result of the email.

[34] Be that as it may, further, by reading the whole of the said email and looking at the context in which the word 'cult' is used, *it is clear that the defendant had used the word 'cult' as a negative connotation to link that the first plaintiff as 'evil'* as the defendant had referred the first plaintiff and the founder of the first plaintiff, ie HE Tsem Tulku Rinpoche as 'Monster', 'Unbeatable con-man' and stated that the first plaintiff had purportedly *tortured and threatened* its members. In this case, the word 'cult' must be read in the negative context of a 'religious cult' and calling a religious organisation a 'cult' is very damaging and implies that the said organisation is involved in negative aspects of religion and/or false teachings.

[35] Therefore, it is obvious from the said email that the gravity of the words used in the said email is *highly damaging, scandalous and vicious*.

[36] It is not disputed that the said email has been circulated among the public via the internet to as many people as possible and also inviting the recipients to read and to spread its contents as widely as possible.

[37] In the case of *Datuk Seri Anwar bin Ibrahim v Wan Muhammad Azri bin Wan Deris* [2014] 9 MLJ 605, the court took *judicial notice that internet is used worldwide and publication on the internet means wide publication* and we refer to the following paragraphs:

> [45] In our case the defamatory statements were published in the website *www.papagomo.com* ie *in the internet and the people all over the world can get access to the website meaning that there was a wide publication of the defamatory statements*.
>
> [46] It is a *judicial notice that the internet is used worldwide*.

[38] In this present case, I agree with the plaintiffs that the said email wasn't an ordinary email directed to one person but the said email was written in the context to address the public, to have the said email widely circulated among the public. Therefore, in my opinion, the said email had been widely circulated and/or presumed to be so.

[39] It is also my opinion that even in the case of the defendant attempted to prove that the email *was sent only to the four individuals named therein or five individuals as a whole as contemplated by the plaintiffs*, ie to 'Dar Cell Kwok' or Monique Kwok Mei Yuen, it does not change the scenario or fact that such publication in the internet via email is deemed to be 'wide circulation because the defendant intended the wide circulation of the said email based on her statements in the said email where the *defendant requested the public to circulate* the said email. The words used is 'All of us need public to know and hear *THE TRUTH. MOST IMPORTANTLY WE NEED TO ALERT THE PUBLIC SO THAT NO NEWER VICTIMS FALLS INTO THE CULT*'.

[40] It was very unfortunate that the defendant had 'lost control' over how the said email was circulated and to whom the said email was sent. The email could have been read by other people as well.

[41] In the Court of Appeal case of *Huth v Huth* [1915] 3 KB 32, it was held at p 39 that:

> It has been laid down — I think rightly — that *the court will take judicial notice of the nature of the document*, ie, that it is a post-card, and will *presume*. in the absence of evidence to the contrary, *that others besides the person to whom it is addressed will read and have in fact read what is written thereon. That is the presumption of fact which arises as a matter of law*. If, even in such a case as that, the defendant could establish that the post-card never was read by a single person — although it is very difficult to conceive that the proof could be given — *he would, notwithstanding the presumption, succeed in that action, because he would have proved that there was no publication. The fact that it is practicallv impossible to prove that any third person read it is the reason why the law takes judicial notice of the nature of the document. and says that the mere fact that the words are written on a post-card which is posted must be taken as some evidence that a third person will read it. or has read it. That is clear law and is quite bevond dispute*.

[42] In fact, the contents of the said email proved that there was clear intention of wide publication by the defendant. In the Court of Appeal case of *Tan Ah Hong v CTOS Data System Sdn Bhd* [2016] MLJU 504; [2016] 3 AMR 457 at p 462, the court held that 'the fact that the respondent had deliberately and intentionally loaded onto its database the information to be accessed by third parties indicates a clear intention of publication'.

[43] Similarly, in the present case, the defendant had deliberately and intentionally 'called out' to the public to widely circulate the said email which proves a clear intention of wide publication. Therefore, based on the above clear law which is beyond dispute, it is practically impossible to prove exactly to whom the said email had been circulated, there is a presumption by law that such circulation over the internet is presumed to be wide publication and the

onus is on the defendant to prove the limited publication as alleged. A

[44] In this case, it is not disputed that the said email had caused humiliation and embarrassment to the plaintiffs. Words and phrases like 'monster', 'con-man', 'torture', 'suffer', 'threaten', 'mentally unstable', 'bitter experiences', 'youth, wealth, 'hard earn-savings that they had lost to the Kechara Organisation' and 'cult' appearing in the said email greatly tarnished the plaintiffs' image and reputation and lowered the plaintiffs in the estimation of the right thinking members of the society. B

C

[45] On the other hand, the evidence also shows that by way of letter dated 5 April 2017 at p 6, Bundle D4, the defendant had offered an unqualified and unreserved apology to the plaintiffs and on the same day also sent *WhatsApp* messages to the third plaintiff which, inter alia, showed remorse for issuing the email and implored the plaintiff to 'Please forgive my ignorance and stupidity' (see pp 7–9, Bundle D4). D

[46] On 6 April 2017 the defendant had offered to resolve the matter by an offer of a sum of RM20,000, and an apology as a settlement offer to the plaintiffs but this was rejected. E

[47] On the stand the defendant continued to show the same sense of remorse when she sent the *WhatsApp* messages of abject apology to the third plaintiff on 5 April 2017, when one of the first things she said on the stand was: F

> First of all, I apologise that I write this kind of email and at that times I have a first law suit, so I was quite upset and then when these people, ex member of Kechara, they aware of I have this case and like Peter Khoo, Jamie Khoo, Tan Sio Chang they called me and told me the, their bitter experience inside there. And I, can only say that I, believe that times and, but when I call them now to come to Court, they, everyone don't want to get involved, so I can say that I was being used so, I would like to apologise to the Plaintiff that I wrote email like that. G

[48] From the plaintiffs' point of view, the defendant's apology is not a sincere apology because according to the plaintiffs it was not given at the earlier stage but after the plaintiffs have issued a letter of demand dated 31 December 2014 and the defendant, in reply to the plaintiffs' letters of demand maintained that the content of the said email is true. The plaintiffs also contended that the said apology was only made one day before the trial on 6 April 2017 when the defendant sent a *WhatsApp* message to the plaintiff (D4/7–9) and at the same time, the defendant's solicitors has issued a letter dated 5 April 2017 (D4/6) to the plaintiff's solicitors, alleging that 'she is willing to offer an unqualified and unreserved apology to your clients in the manner and *on the terms to be agreed* by parties'. H I

[49] The plaintiffs claim that there were no 'terms' discussed nor agreed and that the defendant's solicitor's letter dated 5 April 2017 does not qualify as an effective apology at all as it is merely an 'offer to offer an apology' and there was no full and frank withdrawal of the libel contained in the said email and neither was it a complete and unqualified apology or a fair retraction. Therefore, the alleged apology cannot be relied upon to mitigate any award of damages.

[50] Having read the defendant's letter of apology dated 5 April 2017, my assessment of the words used in the said letter, it is not a qualified apology. The words used is 'willing to offer an unqualified and unreserved apology' speaks for itself that it is full and frank apology. The defendant's solicitor also requested whether the plaintiffs are agreeable to the defendant's proposal. The defendant sent a *WhatsApp* message to the plaintiff (D4/7–9) at the same time shows her conduct that the offer for an apology is genuine and sincere. It does not matter if it is in the *WhatsApp* form, it was still an apology offered by the defendant. It is not disputed that on the next day ie on the 6 April 2017, the defendant admitted liability of her defamatory remarks found in the said email. It further shows that the apology is bona fide and the defendant's true intention to be accountable to the defamatory email sent to the plaintiffs. The missing point here in my view is that even though the defendant had offered an unqualified and unreserved apology to the plaintiffs in the manner and on the terms to be agreed by parties and whether the plaintiffs are agreeable to the defendant's proposal, the proposal was never taken or adhered to by the plaintiffs or for plaintiffs to state what are the plaintiffs' terms if the proposal is to be accepted including retraction of the email or any other form of apology set by the plaintiffs.

[51] Therefore, as far as this court is concern, there was apology from the defendant which this court can consider before awarding damages to the plaintiffs.

TREND IN AWARDING DAMAGES

[52] The defendant is liable for her action. The plaintiffs claim against the defendant for general, aggravated, exemplary damages and an injunction restraining the defendant from further publishing the defamatory remarks. However, in this case the judgment dated 6 April 2017 only allows assessment for general damages.

[53] The plaintiff must be compensated and the next question is how much would be the quantum of damages for the loss of reputation. In *Datuk Seri Utama Dr Rais bin Yatim v Amizudin bin Ahmat* [2012] 2 MLJ 807, it was held that a particular libel case cannot be equated with other libel cases. Each libel case is unique and has its own particular and peculiar facts (see also the Federal

Court case of *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato' Vincent Tan Chee Yioun* [2000] 4 MLJ 77 at pp 81–82).

[54] The defendant submitted that even public figures such as Lim Guan Eng and Dato' Seri Anwar bin Ibrahim in the cases of *Lim Guan Eng v New Strait Times Press (M) Bhd* [2017] 9 MLJ 622 and *Dato' Seri Anwar bin Ibrahim v New Straits Times Press (M) Sdn Bhd & Anor* [2010] 2 MLJ 492 were only awarded RM300,000 as general and aggravated damages and RM100, 000 as compensatory damages respectively where obviously the circulation was much wider. Therefore, it was submitted that the award for compensatory composite damages should not exceed the sum of RM20,000. The defendant also quoted the case of *Kok Yu Po v Wong Kui Man* [2015] MLJU 851 where the court, allowed the global sum of RM50,000 as general and aggravated damages.

[55] On the other hand, the plaintiffs submitted the following cases as guidelines for the court to grant a substantial general damages and aggravated and/or exemplary damages against the defendant based on the circumstances of the present case herein:

(a) *Keith Richard Judd v Suppayah a/l Krishnan* [2016] 9 MLJ 380; [2015] 1 LNS 856:

> The defendants (who was the secretary of a management council) have sent about 16 emails to various residents in the said apartment which is defamatory of the plaintiff (who was the chairman of the management council). The emails were not published by the defendant to outsiders or to parties not entitled to receive the said emails.
>
> The court held that the defendant is liable for defamation and has awarded a general damage for the sum of RM200,000 to the plaintiff;

(b) *Mox-Linde Gases Sdn Bhd (formerly know as MOX Gases Sdn Bhd and prior to that as MOX Gases Bhd) v Wong Siew Yap* [2015] 10 MLJ 413:

> In this case, the first plaintiff was an industrial gas supplier in Malaysia and a subsidiary of an international gas and engineering company and the second plaintiff was the first plaintiff's managing director.
>
> The plaintiffs claim that there was defamation based on three defamatory emails which were circulated by the defendant to various parties and institutions both within Malaysia abroad and to companies/organisations which are directly and/or indirectly linked or connected to the first plaintiff and/or the Linde Group.
>
> The court has awarded the plaintiffs RM150,000 as general damages and RM50,000 as aggravated damages taking into account that '[36] ... the plaintiffs are entitled to receive an award for aggravated damages so as to send a strong message against the defendant who is in

a position to disseminate information widely through the internet that she must exercise a proper degree of care and diligence not to injure others';

(c) *Abu Hassan bin Hasbullah v Zukeri bin Ibrahim* [2017] MLJU 1676; [2017] 1 LNS 1754:

In this case, the plaintiff was a senior academician/lecturer and also the Dean of a Faculty in the University Malaysia Kelantan, whereas the defendant was a lecturer on probation in the said Faculty.

The defendant had authored two offensive emails and caused the same to be published to various groups of people, including all academic staff and administrators of the faculty and the defendant was ordered damages in the sum of RM70,000 to the plaintiff; and

(d) *Raub Australian Gold Mining Sdn Bhd v Mkini Dotcom Sdn Bhd & Ors* [2018] 4 MLJ 209:

In this case, the appellant is the company operating gold mining operations in Raub Pahang, whereas the first respondent is a company that owns and operates an online news portal known as *Malaysiakini* and the second to fourth respondents are the assistant news editor, senior journalist and intern of the first respondent.

The appellant's claim for defamation arose out of three articles and two videos published by the first respondent on its online news portal which was false and defamatory of the appellant.

Despite that the appellant could not locate 17 articles out of the 80 articles that were republished and also cannot confirm that 70 articles out of the 80 articles that were republished to have been visited by readers, the Court of Appeal still awarded a general damage for the sum of RM200,000 to the appellant for loss of goodwill and for vindication of the appellant's reputation.

[56] The plaintiffs' submitted that the global sum of RM500,000, ie general damages for the sum of RM300,000 and aggravated damages and/or exemplary damages for the sum of RM200,000 to each of the plaintiff is reasonable and justified to vindicate the plaintiffs in this case and the defendant ought to be ordered to pay these damages.

[57] I have considered the quantum of damages awarded in the above cited cases by the plaintiffs and the defendant. Other cases which come to my mind where the plaintiffs are former Deputy Prime Minister, Chief Minister and Member of Parliament, the court awarded the damages as follows:

(a) *Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 2 MLJ 492 — the court awarded the sum of RM100,000;

(b) *Datuk Harris Mohd Salleh v Datuk Mohd Shafie Hj Apdal & Ors* [2009] 7 MLJ 371; [2009] 2 CLJ 682 the court awarded the sum of RM50,000; and

(c) *YB Hj Khalid bin Abdul Samad v Datuk Aziz bin Isham & Anor* [2012] 7 MLJ 301; [2011] 1 LNS 1161 the court awarded the sum of RM60,000.

[58] Based on the authorities cited above, this court allows the general damages for the global sum of RM80,000 to all the plaintiff and interest of 5% from 17 May 2014 until full payment thereof. The amount awarded is fair and reasonable.

[59] Costs of RM10,000 to the plaintiffs.

Order accordingly.

Reported by Mohd Kamarul Anwar